demanded of him; that it was negligence not to wire the sender, demanding a payment or guarantee of the extra charges under the circumstances; that mental anguish, though unattended with physical injury, is an element of damage in actions against telegraph companies for non-delivery of messages. *Bryan* v. *W. U. Tel. Co.* (1903),—N. C.—, 45 S. E. Rep. 938.

The effect of the printed regulations is again in question, as in the two preceding notes, and the courts are again in conflict as to the duty of the company regarding the delivery of a message beyond the "free limits," where the sender does not know that the sendee lives beyond and the extra charges have not been paid. The principal case is supported by a recent case in Indiana. *Tel. Co.* v. *Moore*, 39 N. E. Rep. 874, 54 Am. St. Rep. 515. On the other hand it is said, "The duty of the sender is to know after notice on blanks, whether the sendee is within the free limits." The presumption is that the sendee is within the free limits and the sender must take the risk unless he pays the extra charges beyond. See *Tel.. Co.* v. *Henderson*, 89 Ala. 510, 18 Am. St. Rep. 148. As to the duty to find the sendee, see *Tel. Co.* v. *Houghton*, 15 L. R. A. 129. The decision as to the question of damages for mental suffering is in accord with the modern view, although perhaps opposed to the weight of authority in this country. See *Mentzer* v. *Tel. Co.* 93 Ia. 752, 57 Am. St. Rep. 294 and 2 MICHIGAN LAW REVIEW, p. 150.

TORT—NEGLIGENCE—DEFECTIVE APPLIANCE—ABSENCE OF PRIVITY—Defendant was engaged in the manufacture and sale of land rollers. A number of its rollers were sold to W., P. & R. One of these was by them sold to F. & B., and finally by the latter to the plaintiff, a farmer. The tongue of this roller was constructed of defective material and contained a knot-hole which had been plugged and painted so as to prevent detection. While plaintiff was using the roller in the ordinary way, the tongue, owing to the defect, broke, throwing plaintiff in such a manner that he was injured. In an action against the manufacturers of the roller, *Held*, that they were not liable. *Kuelling* v. *Roderick Lean Mfg. Co.* (1903),—N. Y. App. Div.—, 84 N. Y. Supp. 622.

This decision follows the current of New York authorities and is based on the doctrine that in order to permit a recovery by a person not in privity with the manufacturer, the article causing the injury must in its nature be imminently dangerous to human life. The court holds that the roller cannot be considered to be such a dangerous appliance.

In another late case involving the same principles, a defendant who sold diseased hogs to a third person, who in turn sold them to the plaintiff, was held liable for damages caused by the infection of other hogs belonging to the plaintiff. The court held that the original selling was an act dangerous to human life, and extended the liability to include the property loss. *Skinn* v. *Reutter* (1903),—Mich.—97 N. W. Rep. 152. See as to the general subject 2 MICH. LAW. REV. 151, id. 235.

TORT—NEGLIGENCE—INJURY RECEIVED IN ATTEMPT TO SAVE LIFE OF ANOTHER.—Plaintiff was employed as a watchman at a place where ten tracks of defendant company crossed a city street. One of these tracks at the time of the injury was occupied by a passing train. Plaintiff observed a woman upon another of the tracks in imminent danger of being struck by a caboose which defendant's servants had negligently pushed toward the street with no one at its front to warn pedestrians of its approach. He at once hastened to her rescue and pushed her from the track, but was himself struck by the caboose. For the injuries thus received he brings suit. *Held*, plaintiff not guilty of contributory negligence, nor could negligence of the person rescued

be imputed to him so as to prevent his recovery. *Pittsburg, C., C., & St. L, Ry. Co.* v. *Lynch* (1903),—Ohio St.—; 68 N. E. Rep. 703.

In most cases of this nature that have been before the courts the defense urged has been that the plaintiff was guilty of contributory negligence in voluntarily entering upon a hazardous undertaking, but the holdings have been that the safety of human life was such a paramount consideration that plaintiff could not be deemed guilty of contributory negligence unless acting with rashness. *Eckert* v. *Ry, Co.* 43 N. Y. 502; 6 L. R. A. 195. But in the principal case it was sought to impute to the plaintiff the contributory negligence of the person rescued and thus defeat a recovery. The court treats this phase of the question as unaffected by decided cases and refuses on reason and policy to allow such a defense. In such a case as this, in order that a recovery may be had, the defendant must have been guilty of negligence either as to the person rescued or as to the rescuer. *Donahoe* v. *Ry. Co.*, 83 Mo. 560; 53 Am. Rep. 594; SHEARM. & RED. NEG., Sec. 85; BEACH CONT. NEG. p. 69. In the principal case no negligence of the defendant is shown as to the plaintiff, but the action is sustained on the ground that there was negligence as to the woman. If the negligence of the defendant as to the woman is available to establish a right of action in the plaintiff, logic would seem to require that the contributory negligence of the woman should be available as a defense. Possibly the real basis of liability in such cases is that that there is a duty imposed by operation of law upon a person who negligently puts another in a position of peril to compensate any one who reasonably attempts a rescue and is thereby injured.